SUPREME COURT, U.S.
FILED

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NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1996

MARTIN F. MORGAN

Petitioner

VS.

TEXAS UTILITIES ELECTRIC COMPANY

Respondent

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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March 14, 1997

45 pp

QUESTION PRESENTED

1. Does the burden shifting test set out in *St. Mary's Honor Center v. Hicks*, 509 U.S. 502, 125 L.Ed.2d 407, 113 S.Ct. 2742 (1993) permit the trial court to draw inferences favorable to the moving party from conflicting testimony and grant summary judgment even though a trial by jury has been requested?

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Martin F. Morgan

Respondent

Texas Utilities Electric Company

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Morgan being the target of a discrimination type complaint" but would not support an inference that Riley had a racial motivation in terminating Morgan amounts to an impermissible fact finding by the trial court. This usurpation of the role of the jury cannot be justified under the burden shifting test set out in *St. Mary's Honor Center v. Hicks*, 509 U.S. 502, 125 L.Ed.2d 407, 113 S.Ct. 2742 (1993). Since the district court and the Fifth Circuit erred in using the *St. Mary's* test to justify summary judgment, this writ should be granted so that the error may be corrected 10-11

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OCTOBER TERM, 1996

MARTIN F. MORGAN

Petitioner

VS.

TEXAS UTILITIES ELECTRIC COMPANY

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

TO THE HONORABLE, THE CHIEF JUSTICE OF THE UNITED STATES AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Petitioner hereby prays that a Writ of Certiorari issue to the United States Court of Appeals for the Fifth Circuit to review that court's per curiam opinion of December 26, 1996 affirming the trial court's Memorandum Opinion and Order Granting Defendant's Motion for Summary Judgment and the Final Judgment of the

district court dated May 16, 1996.

OPINIONS BELOW

The per curium opinion of the Fifth Circuit Court of Appeals dated December 26, 1996 is reproduced in the Appendix at page A-19.

The Memorandum Opinion and Order Granting Defendant's Motion for Summary Judgment and the Final Judgment of the district court signed on May 16, 1996 is reproduced beginning at page A-1 of the Appendix.

JURISDICTION

The United States District Court for the Northern District of Texas issued its Memorandum Opinion and Order Granting Defendant's Motion for Summary Judgment and signed its Final Judgment on May 16, 1996.[1] The United States Court of Appeals for the Fifth Circuit affirmed the district court's per curium by order

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[1]Appendix, page A-1; A-17

dated December 26, 1996.[2]

Jurisdiction is conferred on this Court by 28 U.S.C. §1254(1), since this petition is being filed within ninety (90) days of the final order of the Fifth Circuit as provided by Sup.Ct. R. 13. The Fifth Circuit ordered that its opinion not be published.

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[2]Appendix, page A-19

STATUTES INVOLVED

42 USC 2000e-2(a)(1)(2) provides as follows:

> (a) Employer practices. It shall be an unlawful employment practice for an employer-
>
> (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin.
>
> (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

STATEMENT OF THE CASE

This is a Title VII case based on race discrimination filed by the Plaintiff, Martin F. Morgan, after he was terminated from his job as senior engineering analyst at Texas Utilities. Morgan is a black man married to a white woman. Two different white female workers accused Morgan of sexually harassing them. One of them said he had exposed himself to her in a rest room about four (4) years before the date of his termination. Morgan denied the charges, but Texas Utilities used the allegations as a basis for terminating him. Texas Utilities moved for summary judgment, relying on the self-serving affidavits of its own personnel and deposition testimony. Morgan filed opposing deposition testimony and affidavits.

In his affidavits and deposition

testimony, Morgan strongly contested that he had been guilty of any sexual harassment. He denied that he had exposed himself to a female employee in a rest room four (4) years prior to the date of his termination.

One of the workers accusing Morgan of sexual harassment had seen pictures of Morgan's wife and said her father would roll over in his grave if she married a black man. Morgan's affidavits and deposition testimony indicated an atmosphere of racial hostility and tension in the work place marked by racist remarks from various Texas Utilities supervisory personnel.

Several years prior to his termination, Morgan had made a complaint against two male white workers for racist remarks that they had made to him. When the two female workers alleged that Morgan had sexually harassed them,

Morgan's supervisor, Horace Riley, talked as though it were an established fact that he had done it, and started laughing. He told plaintiff he was going to fire someone and said words to the effect "now the shoe is on the other foot" referring to the fact that Morgan had made the racial harassment complaint against the white male workers earlier. Horace Riley participated in the decision to fire the plaintiff and was the person who actually terminated him.

In granting the defendant's motion for summary judgment, the district court concluded that the evidence raised by the plaintiff would support a finding that he was not guilty of sexual harassment and had demonstrated a prima facie case of racial discrimination. However, the district court concluded that the fact there was evidence from which a trier of fact could have concluded that plaintiff

did engage in sexual harassment provided a legitimate non-discriminatory reason for his termination, and that the plaintiff had failed to raise an issue as to whether or not the employees of the defendant who terminated the plaintiff had a racial motivation in doing so. For these reasons, the district court granted summary judgment for the defendant. Petitioner appealed the decision to the United States Court of Appeals for the Fifth Circuit, which affirmed the district court's judgment per curium.[3]

Petitioner presents this Petition for Writ of Certiorari within ninety (90) days of the final action of the Fifth Circuit Court of Appeals in affirming the district court's final judgment.

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[3]Appendix, pages A-1; A-19

REASONS FOR GRANTING THE WRIT

I. In order to grant summary judgment for Texas Utilities and deny Morgan a jury trial, the district court had to draw inferences favorable to Texas Utilities from conflicting testimony. The making of such inferences by the court should not be permitted in a summary judgment case, since the jury, as trier of fact, should be allowed to determine the inferences to be drawn. Particularly, the trial court's conclusion that the reference back to Morgan's prior sexual harassment complaint at the time of his termination by Horace Riley would support a conclusion that Riley was taking "some perverse pleasure in seeing Morgan being the target of a discrimination type complaint" but would not support an inference that Riley had a racial motivation in terminating Morgan amounts to an impermissible fact finding by the trial court. This usurpation of the role of the jury cannot be justified under the burden shifting test set out in *St. Mary's Honor Center v. Hicks*, 509 U.S. 502, 125 L.Ed.2d 407, 113 S.Ct. 2742 (1993). Since the district court and the Fifth Circuit erred in using the *St. Mary's* test to justify summary judgment, this writ should be granted so that the error may

be corrected.

As the Fifth Circuit has recognized, summary judgments are appropriate only if there is no genuine issue of fact and the record taken as a whole could not lead a rational trier of fact to find for the non-moving party. *Waggoner v. City of Garland*, 987 F.2d 1160 (Fifth Cir. 1993); *Bodenheimer v. PPG Industries, Inc.*, 5 F.3d 955, 956 (Fifth Cir. 1993). Using the analysis in *St. Mary's Honor Center v. Hicks*, 509 U.S. 502, 125 L.Ed.2d 407, 113 S.Ct. 2742 (1993), held by the Fifth Circuit to apply to summary judgments involving civil rights causes of action in *Bodenheimer v. PPG Industries, Inc.*, supra, the district court held that Morgan did meet his burden of establishing a prima facie case, so that the burden of production shifted to Texas Utilities to produce evidence of a legitimate, non-discriminatory reason for

the adverse employment action. The court held that the defendant did produce evidence of such a reason so that, in order to overcome summary judgment, the plaintiff had to demonstrate that Texas Utilities' offered reason was a pretext for racial discrimination. The district court granted summary judgment on the basis that Morgan failed to carry that burden. Morgan was accused of violating the work rule against sexual harassment. He stated unequivocally in his controverting affidavit and through his deposition testimony that he did not violate that work rule. The jury, as trier of fact, could chose to believe Morgan against the two accusing witnesses, so there is certainly a fact issue as to whether or not he violated the work rule against sexual harassment.

The district court held that Morgan

had failed to demonstrate that the people at Texas Utilities responsible for terminating him actually did not believe his accusers or that the sexual harassment complaint was not the real reason for his discharge, citing *Waggoner v. City of Garland*, 987 F.2d. 1160, 1165 (Fifth Cir. 1993) as cited in *Johnson v. J.C. Penny Company, Inc.*, 876 F.Sup. 135, 139 (N.Dist.Tx. 1995).

The Fifth Circuit had previously recognized in *Bodenheimer v. PPG Industries, Inc.*, supra, the difficulties involved in granting a summary judgment where the state of mind of the defendant is in issue. *Bodenheimer* , 959. Nevertheless, in *Waggoner*, the Fifth Circuit did hold that the granting of a summary judgment may be appropriate in such cases.

Morgan introduced a substantial amount of testimony indicating an

atmosphere of racial tension and bias against black people by Texas Utilities management. The evidence also shows that he had previously made a complaint of racial harassment against two male white workers several years earlier, and that Horace Riley, his supervisor, had sustained his complaint.

Horace Riley referred back to that charge at the time that he terminated Morgan. Plaintiff described the exchange between him and Riley in his controverting affidavit as follows:

> Several years prior to my termination (in 1988), I had made a complaint against two other individuals who had made racist remarks toward me. This complaint was made to Horace Riley, and he did take action against them. When this charge was made against me for supposedly harassing Bernadette Herriage and someone else, Horace Riley made reference to my previous complaints of racial harassment and told me that the shoe was on the other foot now, referring to the charges against me.

In his deposition, Plaintiff testified as follows:

> And I told him the whole story. And he looks at me, and he started laughing in the meeting. And he said, Martin, you know one thing? He said, I don't even care about that. And he said, I am going to fire somebody.
>
> And he says - what else did he say? Oh, he says, Martin, now the shoe is on the other foot; and let's see how you like it, is the statement he said.
>
> Q. What do you think he meant by that?
>
> A. Well, he had complained about people being racist to us. Now, this was a sexual harassment deal. Now it was my turn to get it. So he made that statement, now the shoe is on the other foot.

Riley was asked on his deposition whether he had ever made a statement like that and denied doing so. Taken in the light most favorable to plaintiff, this testimony would support an inference that Horace Riley had a racial dislike of Morgan, resented the fact that Morgan had

made racial discrimination complaints, resented the fact that he was married to a white woman, tolerated an atmosphere of racial hostility in the area under his control, and decided to terminate Morgan at the very first meeting he had with him about the sexual harassment complaints, before there had even been any discussion of the merits of those charges.

However, the district court engaged in a contrary inference:

> Morgan further testified that when Riley first spoke to him about the sexual harassment complaint against him, Riley said to Morgan 'now the shoe is on the other foot let's see how you like it'
>
> Morgan believes that this evidences the fact that his previous complaints were on Riley's mind when Morgan was terminated. Even so, however, the court fails to see how this constitutes evidence that TUEC's reason for terminating Morgan was a pretext *for racial discrimination*. At most, this comment would support a conclusion that Riley was taking some perverse pleasure in seeing

> Morgan be the target of a discrimination type complaint, not that he wanted to get rid of Morgan because of his race. Although Riley may have had a ulterior motive for voting to terminate Morgan's employment, Morgan cannot prevail unless that ulterior motive was on account of Morgan's race.[4]

This statement by the court amounts to the court's assumption of a fact finding role at the summary judgment level which is improper, and cannot be justified under this Court's burden shifting analysis in *St. Mary's Honor Center v. Hicks*, supra.

Morgan had made a demand for jury trial, and the action of the district court in granting summary judgment effectively deprived him of his right to a trial by jury. Because of the conflicts in the testimony that have been pointed out, and the fact that the testimony in Morgan's favor should be

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[4]Appendix, pages A-15

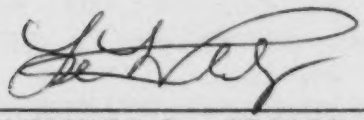
taken as true at the summary judgment level, while the self-serving declarations of Texas Utilities must be taken as false to the extent that they conflict with the evidence favoring Morgan, it was inappropriate for the district court to grant summary judgment in this case.

CONCLUSION

For the foregoing reasons, Petitioner prays that a writ of certiorari issue to review the per curiam affirmance by the Fifth Circuit of the district court's summary judgment. Petitioner further prays that, upon the granting of the petition, the actions of the Fifth Circuit and the district court be reversed and that this cause be remanded to the United States District Court for the Northern District of Texas

for a new trial.

Respectfully submitted,



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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

MARTIN F. MORGAN	§	
	§	
VS.	§	ACTION NO.
	§	4:94-CV-453-Y
	§	
TEXAS UTILITIES	§	
ELECTRIC COMPANY	§	

MEMORANDUM OPINION AND ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Pending before the Court is Defendant Texas Utilities Electric Company's Motion for Summary Judgment, which was filed in the above-styled and numbered cause on May 26, 1995. Plaintiff Martin F. Morgan ("Morgan") filed a response in opposition to the motion on June 30, and defendant Texas Utilities Electric Company ("TUEC") filed a reply to the response on July 14. After consideration of the foregoing and the applicable law, the Court finds that TUEC's motion should be granted.

Morgan claims that he was discharged

from his employment at TUEC in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e, *et seq.*[1] Specifically, Morgan, who is black, claims that TUEC discriminated against him on the basis of his race when it terminated his employment allegedly due to Morgan's violation of TUEC's sexual harassment policy.

In an employment discrimination case, the plaintiff must first produce sufficient evidence to establish a prima facie case. This may be done by showing that the plaintiff (1) was discharged, (2) was qualified for the position, (3) was within that protected class at the time of discharge and (4) was replaced by someone outside of the protected class.

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[1]Morgan's original petition also asserts federal and state constitutional claims. Those claims were dismissed, however, in an order filed on February 8, 1996.

St. Mary's Honor Ctr. v. Hicks, 113 S.Ct. 2742, 2747 (1993) (citing *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973)); see also *Bodenheimer v. PPG Indus., Inc.*, 5 F.3d 955, 958 (5th Cir. 1993) (noting that the burden-shifting test set forth in *St. Mary's* is controlling in the summary judgment context). In order to establish a prima facie case where the discharge allegedly was based on the employee's violation of the employer's rules, "the plaintiff must first demonstrate by a preponderance of the evidence either that he did not violate the rule or that, if he did, white employees who engaged in similar acts were not punished similarly." *Green v. Armstrong Rubber Co.*, 612 F.2d 967, 968 (5th Cir.) (citing *Turner v. Texas Instruments, Inc.*, 555 F.2d 1251, 1254-55 (5th Cir. 1977)), *cert denied*, 449 U.S. 879 (1980). Once the plaintiff

demonstrates a prima facie case, a rebuttable presumption arises that the employer engaged in discrimination. *See St. Mary's*, 113 S.Ct. at 2747 (citing *Texas Dep't of Community Affairs v. Burdine*, 450 U.S. 248, 254 (1981). The burden of production then shifts to the employer to produce a legitimate, nondiscriminatory reason for the adverse employment action. *Id.* Once the employer meets this burden, the presumption created by the plaintiff's demonstration of a prima facie case is rebutted, and the plaintiff, who always retains the burden of persuasion, must demonstrate that the employer's proffered reason was not the true reascn for the adverse employment decision, but rather was merely a pretext for unlawful discrimination. *Id.* To demonstrate pretext, the plaintiff must show "*both* that the reason was false, *and* that

discrimination was the real reason." *Id.* at 2752 (emphasis in original).

After review of the evidence submitted by the parties in the light most favorable to Morgan, the Court finds that Morgan has demonstrated a prima facie case. The parties agree that Morgan has met the first three elements of the prima facie case, in that he has shown that he was discharged, that he was qualified for the position, and that he is a member of a protected class. TUEC asserts, however, that Morgan has failed in his prima facie showing because he has not demonstrated that white employees who engaged in similar acts were not punished as severely as Morgan. While the Court agrees with TUEC that the only comparator who engaged in conduct as egregious as the conduct with which Morgan was accused was also discharged, TUEC has skipped the first prong of this last element--namely,

that a plaintiff satisfies his burden if he demonstrates a genuine issue of fact as to whether he violated the work rule in question. *See Green*, 612 F.2d at 698. After review of the evidence, the Court believes that Morgan has presented sufficient evidence from which the trier of fact could find that he did not violate the policy in the first place, such that he has satisfied his initial burden of demonstrating a prima facie case.

Thus, the burden of production shifts to TUEC to demonstrate a legitimate, nondiscriminatory reason for Morgan's discharge. TUEC meets this burden by presenting admissible evidence of an explanation that would be legally sufficient to justify a judgment on its behalf. *See St. Mary's*, 113 S.Ct. at 2747; *Guthrie v. Tifco Indus.*, 941 F.2d 374, 376 (5th Cir. 1991), *cert. denied*,

112 S.Ct. 1267 (1992). TUEC has presented legally sufficient evidence demonstrating that Morgan actually did engage in a violation of its sexual harassment policy, which violation was sufficiently offensive to warrant immediate discharge. TUEC therefore has satisfied its burden.

As a result, Morgan must demonstrate that TUEC's proffered reason is merely a pretext for racial discrimination. After careful review of the evidence in the light most favorable to Morgan, the Court finds that he has failed to carry this burden. Morgan has wholly failed to demonstrate that the persons at TUEC responsible for making the decision to terminate him actually did not believe his accusers or that the sexual harassment complaint was not the real reason for the discharge:

When an employer discharges an

> employee for the reason that he violated the employer's sexual harassment policy by harassing a fellow employee, the pertinent inquiry is whether the decisionmakers believed at the time of the discharge that the employee was guilty of harassment and, if so, whether this belief was the reason for the discharge. The validity or invalidity of the initial complaint is not the central issue, because the ultimate falseness of the complaint proves nothing about the employer, only the complaining employee. *Waggoner v. City of Garland*, 987 F.2d 1160, 1165 (5th Cir. 1993). . . . [T]he inquiry is limited to whether or not [the employer] believed, in good faith, the allegations against [the plaintiff] and whether the decision to discharge [the plaintiff] was based upon that belief.

Johnson v. J.C. Penney, Co., Inc., 876 F.Supp. 135, 139 (N.D. Tex. 1995). Morgan has failed to present any evidence tending to show that TUEC's decisionmakers did not, at the time the termination decision was made, have a good faith belief that the allegations against Morgan were true or that the

termination decision was actually based upon his race.

Morgan has cited various remarks while he was employed by TUEC that he apparently believes indicate racial discrimination.[2] "To rise above the level of a stray remark and constitute direct evidence of discrimination, a remark must; (1) be made by the decision maker or one whose recommendation is sought by the decision maker; (2) be

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[2]Morgan indicates in his deposition that an unidentified person at TUEC called one of the black engineers "Buckwheat," and that the blacks at the plant frequently had to put up with those types of comments. Additionally, Morgan testified that one of his former supervisors, Steve Schroeder, indicated that the would vote for Adolf Hitler if he were running for office. Furthermore, Morgan testified that Schroeder, who knew that Morgan's wife, Barbara, is white, often concocted stories about a girl with bad morals named Barbara, which Morgan took to be a comment on his wife. Morgan was removed from Schroeder's supervision several months prior to Morgan's termination.

related to the specific employment decision challenged; and (3) be made close in time to the decision." *E.E.O.C. v. MCI Telecommunications Corp.*, 820 F.Supp. 300, 309 (S.D.Tex. 1993) (citing *Turner v. North Am. Rubber, Inc.*, 979 F.2d 55, 59 (5th Cir. 1992); see also *Guthrie*, 941 F.2d at 379 (holding that when discriminatory comments are "vague and remote in time and administrative hierarchy, they are no more than 'stray remarks,' which are insufficient to establish discrimination."), *cert. denied*, 112 S.Ct. 1267 (1992). Morgan has failed to demonstrate when the allegedly discriminatory comments were made, nor does he show that they were related to the decision to terminate him in any way. Furthermore, Morgan has failed to show that these remarks were made by one of the decisionmakers or a person upon whom the decisionmakers

relied in making their decision to terminate Morgan. Indeed, the only person Morgan specifically identifies as having made what he believes to be racially discriminatory comments is his former supervisor, Steve Schroeder, and the evidence is clear that Schroeder was not involved in the decision to terminate Morgan, nor is there any evidence indicating that his input was solicited by the decisionmakers.

The only person involved in the termination decision about whose motives Morgan has presented testimony is Horace Riley, who was the manager of the TUEC plant where Morgan worked and, as such, was one step above Morgan's supervisor in the chain of command. Morgan testified that one day when Morgan's wife came to the plant, Riley was insistent upon meeting her and that when he did, he said nothing and just exhibited an "I want to

see who you are' attitude." (Oral deposition of Martin F. Morgan at 124) Morgan apparently assumed this meant that Riley did not like the fact that Morgan's wife was white. Morgan's assumption, however, is insufficient to constitute evidence of racial discrimination. Morgan has presented no evidence, other than his own subjective beliefs, to support this conclusion. *Cf. E.E.O.C. v. Exxon Shipping Co.*, 745 F.2d 967, 976 (5th Cir. 1984) ("pretext cannot be established by mere 'conclusory statements' of a plaintiff who feels he has been discriminated against.").

Morgan further testified that Riley was tired of TUEC's employees making complaints about discriminatory remarks made by their coemployees. In 1988, four years prior to his termination, Morgan made such a complaint to Riley about two coworkers, and as a result, Morgan

believes Riley wanted to terminate him. Again, Morgan has submitted little more than his own subjective beliefs in support of this conclusory assertion. Morgan points to a chronological summary of Morgan's employment allegedly "prepared by Texas Utilities in connection with the investigation of sexual harassment charges brought against Plaintiff in 1992, "(Pl.'s Resp. and Br. in Opposition to TUEC's Mot. for Summ. J. at 26), that included Morgan's complaint against the two coworkers as an entry on the summary. Morgan believes that this demonstrates that his 1988 complaint "was still very much in management's mind in 1992 when the decision was made to fire [him]." (Pl.'s Resp. and Br. in Opposition to TUEC's Mot. for Summ. J. at 25) The Court disagrees. Morgan has wholly failed to show that any of the decisionmakers were involved in preparing

the summary. Indeed, the Court has thoroughly reviewed each of the deposition excerpts submitted by Morgan in response to TUEC's motion, and it appears that none of the persons involved in the decision to terminate Morgan whose deposition Morgan presented to the Court had even seen the chronological summary prior to their deposition. *See* Oral Deposition of Scott Diermann at 38; Oral Deposition of Horace Riley at 23. The Court has found no other evidence, and Morgan has failed to point the Court to any such evidence, demonstrating that the summary was either prepared by one of the decisionmakers or that one of them relied upon or reviewed the summary prior to their decision to terminate Morgan. As a result, the Court is unpersuaded that this summary constitutes any evidence that Morgan was terminated on account of his race.

Morgan further testified that when Riley first spoke to him about the sexual harassment complaint against him, Riley said to Morgan "now the shoe is on the other foot . . . let's see how you like it . . . . " (Oral deposition of Martin F. Morgan at 125.) Morgan believes that this evidences the fact that his previous complaints were on Riley's mind when Morgan was terminated. Even so, however, the Court fails to see how this constitutes evidence that TUEC's reason for terminating Morgan was a pretext *for racial discrimination*. At most, this comment would support a conclusion that Riley was taking some perverse pleasure in seeing Morgan be the target of a discrimination-type complaint, not that he wanted to get rid of Morgan because of his race. Although Riley may have had an ulterior motive for voting to terminate Morgan's employment, Morgan cannot

prevail unless that ulterior motive was on account of Morgan's race.

It is, therefore, ORDERED that TUEC's Motion for Summary Judgment (document number 19-1) is hereby GRANTED.

SO ORDERED

SIGNED May 16, 1996.

s/Terry R. Means
TERRY R. MEANS
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

MARTIN F. MORGAN	§	
	§	
VS.	§	ACTION NO.
	§	4:94-CV-453-Y
	§	
TEXAS UTILITIES	§	
ELECTRIC COMPANY	§	

FINAL JUDGMENT

In accordance with the Memorandum Opinion and Order issued this same day and Federal Rule of Civil Procedure, 58,

It is hereby ORDERED, ADJUDGED AND DECREED that summary judgment is granted in favor of defendant Texas Utilities Electric Company, and all of plaintiff Martin F. Morgan's claims in the above-styled and numbered cause are hereby DISMISSED WITH PREJUDICE to the refiling same. All costs of court shall be borne by the party incurring same.

SO ORDERED.

SIGNED May 16, 1996.

s/Terry R. Means
TERRY R. MEANS
UNITED STATES DISTRICT JUDGE

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 96-10723
Summary Calendar

MARTIN F. MORGAN,

Plaintiff-Appellant,

VERSUS

TEXAS UTILITIES ELECTRIC COMPANY,

Defendant-Appellee.

Appeal from the United States District Court For the Northern District of Texas
(4:94-CV-453-Y)

Before JONES, DeMOSS and PARKER, Circuit Judges.
PER CURIAM*

Plaintiff-Appellant, Martin F. Morgan appeals the summary judgment granted to Defendant-Appellee, Texas Utilities Electric Company in this

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* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

employment discrimination suit brought pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e, *et seq.* Specifically, Morgan, who is black, claims that TUEC discriminated against him on the basis of his race when it terminated his employment allegedly due to Morgan's violation of TUEC's sexual harassment policy. Having reviewed the briefs, the record and the applicable law, we conclude that the summary judgment should be affirmed for essentially the reasons relied on by the district court. *Morgan v. Texas Utilities Electric Co.*, 4:94-CV-453-Y (N.D.Tex. May 16, 1996).

AFFIRMED.

(FILED in 5th Circuit on December 26, 1996, as indicated by the stamp of the clerk)